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No. 80-2152

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF MISSOURI, *et al.*,
Petitioners,

v.

CRATON LIDDELL, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF IN OPPOSITION OF RESPONDENTS BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, ET AL.

JOHN H. LASHLY
PAUL B. RAVA
KENNETH C. BROSTRON
LASHLY, CARUTHERS, THIES, RAVA & HAMEL
714 Locust Street
St. Louis, Missouri 63101
(314) 621-2939

ROBERT H. KAPP
ALLEN R. SNYDER
HOGAN & HARTSON
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 331-4500

Attorneys for Respondents The Board of Education of the City of St. Louis, et al.

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BRIEF IN OPPOSITION OF RESPONDENTS BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, ET AL.

Petitioners State of Missouri, and certain state officers (hereinafter "Petitioners" or "State Defendants"), have asked this Court to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered on March 3, 1980, *Adams* v. *United States*, 620 F.2d 1277, as well as the judgment and opinion of the Eighth Circuit entered on February 13, 1981, *Liddell* v. *Board of Education*.[1] Respondents The Board of Education of the City of St. Louis, Missouri, its Board members, officers and top administrators (hereinafter "City Board")—who were co-defendants with Petitioners below—urge this Court to deny the instant Petition.

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[1] This opinion is reprinted at page 1 of the Appendix ("App.") to the instant Petition for a Writ of Certiorari ("Pet.").

STATEMENT OF THE CASE

In its decision of March 3, 1980, the Court of Appeals held that both the State Defendants and the City Board had failed to meet their constitutional duty to dismantle the pre-1954 *de jure* racially dual school system in the City of St. Louis.[2] Relying on *Green* v. *County School Board*, 391 U.S. 430 (1968), the Eighth Circuit determined that the establishment of a neighborhood attendance policy after 1954 did not fulfill the defendants' "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch" and that no such steps had been undertaken (620 F.2d at 1285-86). The Eighth Circuit also found that, as in *Columbus Board of Education* v. *Penick*, 443 U.S. 449 (1979), the foreseeability of segregative consequences warranted an inference of segregative intent.

The Eighth Circuit ordered the District Court to adopt a city-wide plan of mandatory student transfers in conformity with the specific directions provided in the Opinion. The appellate court expressly recognized, however, that due to the demographics of St. Louis,[3] a substantial number of black public school students in the City would remain in one-race schools even after implementation of the transfer plan. Thus, the appellate court also ordered the trial judge to consider other techniques to help reduce segregation in those schools which would remain all-black even after the desegregation plan took effect, including voluntary student exchanges with suburban school districts. *Adams* v. *United States*, *supra*, 620 F.2d at 1296-97.

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[2] For an historical summary of this case, see Adams v. United States, 620 F.2d 1277, 1281-84 (8th Cir.) (en banc), *cert. denied*, 101 S. Ct. 88 (1980).

[3] As of March 13, 1981, there were 60,438 students enrolled in the St. Louis public school system, of whom 47,684 (or 79%) were black.

Neither the State Defendants nor the City Board filed a petition for a writ of certiorari from this 1980 Eighth Circuit decision. Only plaintiffs-intervenors Adams, *et al.*, a white parent group, sought review in this Court, on some of the same grounds relied upon by the State here. Their petition was denied. *Adams* v. *United States*, 101 S. Ct. 88 (1980).

On remand, after a hearing and in conformity with the mandate, the District Court entered findings of fact and conclusions of law, holding, *inter alia*, that the State of Missouri was a "primary constitutional violator," since it had required, and failed to dismantle, the *de jure* dual school system maintained under color of state law prior to 1954. Accordingly, the State was ordered to pay one-half of the total costs of implementing the comprehensive city-wide desegregation plan proposed by the City Board and approved by the District Court.

The desegregation plan was placed into effect at the beginning of the 1980-81 school year, as required by the appellate court. The transition to the new configuration and other educational requirements of the plan was accomplished without any significant incident. Many thousands of students were integrated in schools located throughout the City and over 36% of the teachers and principals were reassigned to provide the required staff balance. Year-end reports were favorable and encouraging for the future.

Since the Eighth Circuit had directed the District Court to consider further relief for the students remaining in unavoidably segregative conditions—indeed, the District Court's desegregation plan leaves 30,000 of the City's 60,000 public school students still attending one-race schools—the District Court in paragraph 12 of its May 21, 1980, Order directed the State Defendants, the United States and the City Board to develop proposed interdistrict solutions primarily on a voluntary basis. Para-

graph 12(a) of the District Court's May 21 Order, as amended by later orders,[4] directed the State Defendants, the United States and the City Board to develop "a voluntary, cooperative plan of pupil exchange" between the St. Louis school district and the surrounding suburban school districts. Paragraph 12(b) required development of a proposed plan for consolidation or merger and full desegregation of the separate vocational education programs operated by the City Board and the Special School District of St. Louis County. Paragraph 12(c), as amended, required development of a "feasibility plan" for interdistrict school desegregation.

The State Defendants appealed the May 21, 1980, Order and sought a stay pending appeal. This and all other stay requests subsequently filed by the State Defendants were consistently denied by the lower courts, by both Justice Blackmun and Justice Rehnquist, and finally by the whole Court on April 20, 1981.[5]

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[4] The full text of paragraph 12(a)-(c) of the May 21, 1980, Order, as amended, is set forth at Appendix A to this Brief.

[5] *See* Liddell v. Board of Education, 491 F. Supp. 351, 355 (E.D. Mo. 1980) (statement that no stay of the May 21, 1980, Order will be granted); Liddell v. Board of Education, No. 72-100C(4) (E.D. Mo., Feb. 26, 1981) (denial of a stay of the requirement that the State prepare a voluntary interdistrict plan); Adams v. United States, No. 80-1458 (8th Cir., Aug. 15, 1980) (denial of a stay of Paragraphs 12(a), (b) and (c) and other portions of the May 21 Order); Liddell v. Board of Education, No. 80-1458, slip op. at 20 (8th Cir., Feb. 13, 1981) (Pet. App. A-16) (denial of a stay of the December 19, 1980, order, requiring that the State prepare a new voluntary interdistrict plan); Liddell v. Board of Education, No. 80-1458, slip op. at 12-17 (8th Cir., March 19, 1981) (Pet. App. A-33-38) (denial of a stay of Paragraphs 12(a), (b) and (c)); Board of Education v. Liddell, No. A-200 (Blackmun and Rehnquist, Circuit Justices, Sept. 2, 9, 1980) (denial of a stay of all portions of the May 21, 1980, Order); State of Missouri v. Board of Education, No. A-285 (U.S., April 20, 1981) (denial of a stay of Paragraphs 12(a), (b) and (c)).

On February 13, 1981, the Court of Appeals affirmed the District Court's May 21, 1980, Order. Pet. App. A-1-24. In rejecting the State Defendants' contentions regarding paragraph 12, the Court of Appeals held, *inter alia*, that the voluntary pupil exchanges contemplated by paragraph 12(a) are a "valid part of the attempt to fashion a workable remedy within the City." Pet. App. A-15. The Court of Appeals found "ample support in the record" for the District Court's conclusion that the State Defendants were "primary constitutional wrongdoers" responsible for the unlawful segregation of the schools within the City of St. Louis. Pet. App. A-23.

On March 19, 1981, the Court of Appeals denied a petition for rehearing and also denied the State Defendants' renewed motion for a stay of paragraph 12. Pet. App. A-38. As noted above, this Court also denied the State Defendants' renewed stay application. *State of Missouri* v. *Board of Education*, No. A-825 (U.S., April 20, 1981).

Proceedings have therefore continued in the District Court. Hearings were held throughout May and June on the proposed plans submitted by the parties as well as other matters concerning the ongoing desegregation plan presently in operation within St. Louis. On May 21, 1981, the court approved, subject to any party's objections, a consent decree under paragraph 12(b) providing for the desegregation of City and county vocational programs, with directions for the necessary funding. Pet. App. A-65-93. After further proceedings, on June 11, 1981, the District Court ordered a vocational plan to be implemented.

On July 2, 1981, the District Court entered an Order implementing paragraph 12(a), which provides the framework and procedures for voluntary exchanges between the City schools and the school districts in three

surrounding counties. As provided by paragraph 12(a), the plan is purely voluntary and no school district or student is required to participate. Instead, the school districts and students are encouraged to do so through a combination of fiscal, educational and other incentives.

After having first suspended reporting requirements under paragraph 12(c), the District Court on June 23, 1981, terminated any further reporting obligations of any party pursuant to paragraph 12(c). A copy of that order is attached hereto as Appendix B.

SUMMARY OF ARGUMENT

Petitioners here seek review of two basic issues: first, whether the Eighth Circuit erred in concluding that the State Defendants and the City Board should be held liable for failing to dismantle their formerly *de jure* racially dual school system (Pet. 5-20); and, second, whether the provisions of paragraph 12 of the District Court's May 21, 1980, Order, affirmed by the Eighth Circuit on February 13, 1981, somehow violate the requirements of *Milliken* v. *Bradley*, 418 U.S. 717 (1974) (*"Milliken I"*), or of the due process clause of the United States Constitution (Pet. 20-30).

The City Board submits that Petitioners have failed completely to show that the decisions below conflict with any ruling from another Circuit or from this Court, or that they otherwise raise any issue warranting review here. Moreover, the City Board respectfully submits that it might seriously disrupt the education program of the City schools if the Court were now to grant review with regard to the propriety of the City of St. Louis desegregation remedial plan, which has been fully and effectively in operation since September, 1980. Finally, all of Petitioners' contentions with regard to paragraph 12 of the District Court's May 21, 1980, Order are not only

meritless, but are also untimely. These provisions of the Order merely call on Petitioners, as well as the City Board, to draft and submit to the District Court certain proposed plans; they neither impose any obligations—other than the drafting of a plan—on anyone, nor do they contemplate the possibility of any mandatory interdistrict relief. If Petitioners are not satisfied with the District Court's orders entered pursuant to paragraph 12(a) on July 2, 1981, and pursuant to paragraph 12 (b) on June 11, 1981, their appropriate course of action is to seek review of those orders by the Eighth Circuit. With respect to paragraph 12(c), this petition is moot because the District Court has suspended all reporting requirements under paragraph 12(c).

REASONS FOR DENYING THE WRIT

1. Petitioners contend that the Eighth Circuit's 1980 liability holding failed to analyze properly the statistical and other evidence regarding post-1954 demographic shifts in St. Louis. Petitioners argue that as a result the court improperly held that the State Defendants and the City Board failed to meet their constitutional duty to dismantle the pre-1954 state-mandated *de jure* system of school segregation in St. Louis. Petitioners offer no reason why this essentially fact-oriented question merits review here. Furthermore, Petitioners' contentions are not meritorious.

Prior to this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), the Constitution and statutes of the State of Missouri mandated a system of racial segregation in all the State's public schools. *See Adams* v. *United States*, *supra*, 620 F.2d at 1280. Under those circumstances, it is well settled that the State, as well as the City Board, had an affirmative obligation after 1954 to dismantle the City's formerly dual school system. *Cooper* v. *Aaron*, 358 U.S. 1, 7 (1958); *United*

States v. *Missouri*, 363 F. Supp. 739, 747 (E.D. Mo. 1973), *aff'd in part, rev'd in part on other grounds*, 515 F.2d 1365 (8th Cir.), *cert. denied sub nom. Ferguson Reorganized School District* v. *United States*, 423 U.S. 951 (1975). When a state has failed to meet its constitutional responsibility in this regard, the courts will impose on the state the duties, and the attendant costs, necessary to remedy the constitutional violation. *See, e.g., Milliken* v. *Bradley*, 433 U.S. 267 (1977) (*"Milliken II"*).

Petitioners do not challenge these legal standards. Instead, they argue that the Court of Appeals drew the wrong inferences from certain statistical and demographic evidence, and they contend that the State had removed all legal impediments to dismantling the dual school system (Pet. 5-20). A review of the Court of Appeals' opinion, however, demonstrates that the record provides ample support for the court's conclusions on these issues.

Moreover, Petitioners have failed even to suggest that the Eighth Circuit "has rendered a decision in conflict with the decision of another federal court of appeals on the same matter." *See* Rule 17.1(a), Sup. Ct. Rules. Neither have Petitioners demonstrated that the decision below is inconsistent with any decision of this Court, or otherwise presents an important or novel question of law. *See id.* at Rule 17.1(a)-(c). Petitioners' challenge to the Court of Appeals' conclusions on liability do not raise issues worthy of review by this Court on a writ of certiorari.

2. Another factor militating against this Court's exercise of its discretion to grant review of the liability issues here relates to the unusual timing of this Petition.[6]

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[6] Indeed, it is not even clear whether the instant Petition is jurisdictionally timely to the extent that it seeks review of the Court of Appeals' 1980 liability determination, which was reached

The Court of Appeals issued its decision, finding Petitioners (and Respondent City Board) liable on March 3, 1980. On October 6, 1980, this Court denied a petition for a writ of certiorari to review that decision. 101 S. Ct. 88 (1980).[7] Following remand from the Eighth Circuit, the District Court on May 21, 1980, entered its remedial order calling for a desegregation plan to be implemented in time for the September, 1980, opening of the new school year. The State Defendants repeatedly sought a stay of that order from the District Court, the Court of Appeals, two Justices of this Court, and the full Court, but such a stay was consistently denied.[8]

Respondent City Board has worked tirelessly since the District Court's May 21, 1980, Order to make the court-ordered desegregation plan work. The City Board called upon parents, teachers, students—indeed, the whole community—to cooperate in seeking to avoid the problems that have accompanied court-ordered desegregation in some other cities. This cooperative effort has proven remarkably successful. The City of St. Louis has just completed its first full school year operating under a court-ordered desegregation plan, and no significant incidents or difficulties marred the smooth implementation of the plan.

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after trial of both liability and remedy issues. *See* Adams v. United States, *supra*, 620 F.2d at 1283. *Compare* Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 418 (1923), *with* Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251 (1916); Mercer v. Theriot, 377 U.S. 152 (1964). Petitioners' explanation for their failure to seek review of the 1980 decision—the "obscure nature" of that opinion, Pet. 15—is totally without merit.

[7] That petition was filed by plaintiffs-intervenors Adams, *et al.*, and not by the State Defendants. The Adams Petition, however, raised essentially the same issues as those raised in Sections I and II of the instant Petition.

[8] *See* note 5, *supra*.

The City Board—which was a co-defendant with Petitioners below—urges this Court not to grant further review at this time with regard to this fully operational desegregation plan. The grant of a writ of certiorari now would simply resurrect and exacerbate all the doubts and concerns that the community long since put behind it in uniting to make the court-ordered plan work for the City's school children. We submit that under these circumstances the Court should not exercise its discretion to grant further review.

3. The issues raised by Petitioners with regard to sub-paragraphs (a), (b) and (c) of paragraph 12 of the District Court's May 21, 1980, Order reflect a misunderstanding of that order, are totally premature,[9] and in any event present no issue worthy of review by this Court.

a. Petitioners argue that paragraph 12(a) constitutes an "interdistrict" order, and thus violates *Milliken I*, since the lower courts to date have found no interdistrict constitutional violation.[10] *See* Pet. 20-24. Petitioners

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[9] There is also substantial doubt about whether a jurisdictional basis exists for Petitioners' appeal of paragraph 12 of the order, since it was wholly interlocutory and no request for certification pursuant to 28 U.S.C. § 1292 was ever made. *See* Bradley v. Milliken, 468 F.2d 902, 903 (6th Cir.), *cert. denied*, 409 U.S. 844 (1972); Taylor v. Board of Education, 288 F.2d 600, 603 (2nd Cir. 1961). *Compare* Liddell v. State of Missouri, No. 80-1458, slip op. at 18 n.5 (8th Cir., Feb. 13, 1981) (Pet. App. A-14 n.5).

[10] The City Board and plaintiffs Caldwell, *et al.* ("NAACP") have filed motions in the district court seeking leave to file amended pleadings adding suburban school districts as parties, alleging interdistrict constitutional violations, and seeking mandatory interdistrict relief. All parties to this case agree that no such relief would be proper absent a finding of an interdistrict violation, or an intradistrict violation with interdistrict effects, as required by *Milliken I*.

have misconstrued paragraph 12(a). It does not direct or suggest any mandatory interdistrict desegregation.

Paragraph 12(a) provides that the State Defendants, the City Board, and the United States shall undertake "every feasible effort" to develop a "voluntary, cooperative plan of pupil exchange which will assist in alleviating the school segregation in the City of St. Louis," to determine which county school districts are willing to participate in the plan, and to submit such a plan to the court for its consideration. The District Court has not ordered, and paragraph 12(a) does not contemplate, a plan of involuntary participation by county school districts, or by school children anywhere. As stated by the Eighth Circuit in its February 13, 1981, decision (Pet. App. A-15), "Because the plan is to be voluntary, no question is raised about whether the district court will be able to enforce the plan once it is drawn up." Thus, the State Defendants have no basis for contending that they are now being ordered to prepare a mandatory interdistrict remedy.

Indeed, there is nothing in the paragraph 12(a) plan entered by the District Court on July 2, 1981, which requires the interdistrict transfer of students. The court characterized the plan as "voluntary in philosophy and fact." [11] Neither students nor school districts are

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[11] The court's July 2, 1981, Order provides (p. 7):

> These general characteristics apply to all of the following elements of the plan:
>
> A. The plan is voluntary in philosophy and fact. This point is central to this plan and distinguishes it from other alternatives. The word "voluntary" as used throughout should be understood in its usually accepted sense, specifically:
>
> No students would be required to attend any schools but those to which they would normally be assigned. The plan presents additional options and incentives for students, parents, and school districts. Every decision concerning the choice

required to participate. School districts and students alike are encouraged to participate through a combination of fiscal incentives, magnet schools and other specialized programs. The Order imposes no obligations on school districts which do not participate or on their students. Suburban school districts were asked to notify the Court by August 6 whether they wished to participate. As of that date, no suburban district had unconditionally agreed to participate in the paragraph 12(a) plan.[12]

If the State Defendants are not satisfied with the July 2 Order, then they of course have the right to seek review of that Order. Paragraph 12(a) of the May 21, 1980, Order, however, imposed no obligations on Petitioners other than the requirement that they draft a proposed plan. Thus, at this stage, and in this Court, Petitioners' challenges to paragraph 12(a) are entirely premature,[13] and do not warrant review.

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of schools and districts other than students' home schools and districts would be made by students and their parents.

Participation in this plan is neither an admission of liability nor an element of proof of liability of any suburban school district in an inter-district school desegregation case.

A school district's participation in this plan would be voluntary. Each school district in the St. Louis metropolitan area is encouraged to make its own independent decision whether to participate in the plan.

[12] Of the 39 suburban school districts eligible to participate in the paragraph 12(a) plan, 33 have decided not to do so, and two have stated they will not respond until after this Court's ruling on the instant Petition. Four districts—Kirkwood, Clayton, University City, and Ritenour—have stated they would agree to participate, but only if substantial revisions are made in the plan. Only the City Board has agreed to participate unconditionally.

[13] Similarly, the *amici curiae* briefs filed herein by certain suburban school districts assume that the District Court is planning somehow to force suburban districts or students to participate in a paragraph 12(a) plan. There is simply no basis for such an assumption: the language of paragraph 12(a) does not support

The State Defendants argue (Pet. 21) that the paragraph 12(a) plans contemplated by the District Court are not voluntary as to them. However, it is entirely within the power of the District Court in this case to order the State Defendants to prepare and fund a plan for *voluntary* interdistrict pupil transfers as a supplement to the other features of the intradistrict remedy. The State Defendants have already been adjudicated to be primary constitutional violators who have failed to fulfill their constitutional obligations to dismantle the racially dual structure of public schools in St. Louis. Thirty thousand City school children continue to attend one-race public schools today as a result of this constitutional violation. The State Defendants cannot complain when they are ordered to prepare a voluntary plan which, it is hoped, will give at least some of those children an opportunity to exercise their right to an education free from the effects of segregation for which the State has been held to be primarily responsible.

This Court has recognized that *Milliken I* does not protect a constitutional violator from being ordered to implement a remedial plan which extends beyond the city in which the violation occurred, so long as suburban districts or other nonparties are not ordered against their will to participate in the plan. *Hills v. Gautreaux*, 425 U.S. 284, 297-300 (1976). In *Gautreaux* this Court rejected HUD's contention that because its constitutional violation (racial discrimination in the siting of public housing) occurred in the City of Chicago, *Milliken I* precluded an order against HUD which would affect its conduct in the greater metropolitan area. 425 U.S. at

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it; the District Court's July 2 plan is entirely voluntary; and the City Board agrees that suburban districts cannot be required to participate in any interdistrict remedy unless they are made parties to a case that meets the standards set forth in *Milliken I*. *See also* the District Court's Conclusions of Law of June 3, 1980, discussed at note 16, *infra*.

297. This Court found that such relief was well within the broad equitable power of a federal court to correct a violation of the federal constitution. Thus, the plan contemplated by paragraph 12(a) is supported by *Gautreaux*. At the moment, however, no such remedial plan is before this Court for review.

b. Petitioners' challenge to paragraph 12(b) of the Order is also premature. The District Court found, *inter alia*, that the State Defendants had violated the Constitution by failing to take effective measures to disestablish the dual system of vocational education existing in the City and in St. Louis County. This finding underlies paragraph 12(b), which, as amended, required the State Defendants, the City Board, and the United States to develop and submit a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special School District of St. Louis County and the City Board.

Recent developments, however, have made irrelevant Petitioners' contentions regarding the paragraph 12(b) requirement that defendants submit a vocational education desegregation plan. All concerned parties,[14] including the State Defendants, joined in submitting a proposed consent decree which provides for a mutually acceptable plan, although the State Defendants reserved their right to challenge the funding provisions for the implementation of the plan. As a result of this agreement, the District Court on June 11, 1981, issued an order providing for desegregation of the vocational education programs. Pet. App. A-65.

The merits (and the record) of that June 11 order are not before this Court, and thus Petitioners' contentions

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[14] The Adams plaintiffs-intervenors, who would not be affected by any paragraph 12(b) plan, did not join the proposed consent order.

as to paragraph 12(b) are irrelevant. Any challenge now in this Court regarding the propriety of the June 11 order that resulted from the paragraph 12(b) process is premature.

c. Petitioners also challenge paragraph 12(c) of the District Court's May 21, 1980, Order. Paragraph 12(c), as amended, had called on the State Defendants, the City Board and the United States to develop and submit a "feasibility plan" for interdistrict desegregation.[15] The order neither called for nor contemplated[16] implementation of such a plan prior to further evidentiary proceedings.[17]

As Petitioners note (Pet. at 28), on April 1, 1981, the District Court suspended all further requirements under paragraph 12(c). Even more important, on June 23, 1981, the District Court granted the February 27 motion of the NAACP to *terminate* all further reporting re-

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[15] The language quoted above reflects the court order of September 17, 1980, amending paragraph 12(c). Pet. App. A-41. Petitioners and the *amici* choose to ignore the amendment and instead rely on the language which was superseded by the amendment. *See* Pet. 4, 28, 29. Thus, all the arguments which Petitioners present on such superseded terminology as "vestiges" (*see* Pet. 28-30) are irrelevant.

[16] In its Conclusions of Law issued June 3, 1980, the District Court stated that no suburban district "can be ordered to participate until its rights have been adjudicated." Liddell v. Board of Education, *supra*, 491 F. Supp. at 359. Elaborating on this point, the judge in a letter to all parties dated September 5, 1980, made it clear that county school districts would not be ordered to participate in any desegregation remedy unless and until they had been made parties to the litigation and afforded a "full opportunity for a hearing and appeal." (A copy of the Court's letter is attached as Appendix C.)

[17] As noted above, the City Board and the NAACP have filed motions seeking leave to file pleadings alleging interdistrict constitutional violations which, if proven, would satisfy the standards set forth in *Milliken I*. *See* note 10, *supra*.

quirements under paragraph 12(c). *See* Appendix B. Thus, Petitioners' arguments with regard to paragraph 12(c) of the May 21 Order were meritless in the first instance and are now totally moot.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JOHN H. LASHLY
PAUL B. RAVA
KENNETH C. BROSTRON
LASHLY, CARUTHERS, THIES, RAVA & HAMEL
714 Locust Street
St. Louis, Missouri 63101
(314) 621-2939

ROBERT H. KAPP
ALLEN R. SNYDER
HOGAN & HARTSON
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 331-4500

Attorneys for Respondents The Board of Education of the City of St. Louis, et al.

APPENDICES

APPENDIX A

The full text of paragraph 12(a)-(c) of the District Court's May 21, 1980 order, as amended, is as follows:

12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:

a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchange which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that interdistrict pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by December 15, 1980.

The State defendants, the United States, and the St. Louis Board of Education are ordered to develop a closer and more efficient cooperation among themselves for the pursuit of the objective hereof. In particular, they are directed to establish close liaison procedures and prepare concrete and specific proposals involving the county school districts and evaluate all other reasonable proposals, including any from county districts, and intensify their joint efforts. While the results disclosed in the Updating Report of the St. Louis Board of Education of September 11, 1980 are encouraging and represent some tangible achievements, a great deal more should be accomplished.

One of the subjects to be considered for voluntary cooperation between the City and the suburban school districts shall be the study of the

feasibility of establishing magnet schools located in suburban districts with attendance open to students of both the suburbs and the City. Consideration may be given to the expansion beyond the boundaries of St. Louis County into St. Charles and Jefferson Counties subject to limits of distance and practicality. The location of these magnet schools should be determined by agreement between the St. Louis Board of Education and the suburban school districts involved. The State and the St. Louis Board of Education will investigate the availability of funding for this program. A joint report on the status and results including the availability of technical assistance and funding of this effort should be given to the Court by the United States, the State defendants, and the St. Louis Board of Education on December 15, 1980.

Pursuant to [this] paragraph * * *, the State of Missouri and particularly the State Board of Education and the Commissioner of Education of the State of Missouri shall submit a new plan of voluntary and cooperative desegregation on or before February 2, 1981. The plan shall encompass each district within St. Louis County. Jefferson and St. Charles Counties shall also be included for use of magnet schools to be located in St. Louis City and County.

The State of Missouri shall report back to the Court on March 2, 1981 as to those districts in St. Louis County, Jefferson and St. Charles Counties that are willing to participate in the plan and those that are not willing to participate in the plan. The report of March 2, 1981 shall include the number of students that each district is willing to receive and those

that they desire to send outside of their district, either to magnet schools in the County or in the City of St. Louis, including the race and grade of those students.

b) To develop and submit to the Court by December 15, 1980, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis and the school district of the City of St. Louis, for implementation in the 1981-82 school year.

c) On or before February 16, 1981 the State defendants and the St. Louis Board of Education shall prepare and submit to the Court a feasibiiity plan of inter-district school desegregation involving the St. Louis school district and such suburban school districts, that will provide complete and lasting school desegregation. These considerations may apply to those suburban school districts which are not necessarily confined to the suburban districts located in St. Louis County but limited only by considerations of feasibility and practicality, including reasonableness of transportation times and distances. This feasibility plan should include educational and ancillary components such as those outlined in the Court of Appeals' opinion of March 3, 1980 in this case, and should specifically include pupil assignment and administrative reorganization provisions.

APPENDIX B

H (203) 81

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(4)

CRATON LIDDELL, *et al.*,
Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, *et al.*,
Defendants.

ORDER

This matter is before the Court on the parties' separate motions related to paragraphs 12(a) and 12(c) of Judge Meredith's order dated May 21, 1980, as amended. To expedite ongoing efforts to design a voluntary, cooperative desegregation plan in compliance with the mandate of the United States Court of Appeals for the Eighth Circuit,

IT IS HEREBY ORDERED that the motion to Terminate Further Reporting Under Paragraph 12(c) filed by Caldwell plaintiffs-intervenors on February 27, 1981, H(8)81, be and the same is granted.

IT IS HEREBY FURTHER ORDERED that the post hearing motion to terminate 12(a) hearing and to commence 12(c) proceedings filed by Liddell plaintiffs, H(155)81, be and the same is denied.

This Court retains jurisdiction of this matter for all purposes, including entry of such additional orders as may, from time to time, be necessary and proper related to paragraphs 12(a) and 12(c) of Judge Meredith's order dated May 21, 1980, as amended.

Dated this 23rd day of June, 1981.

/s/ William L. Hungate
United States District Judge

APPENDIX C

James H. Meredith
Senior Judge

425-4217
Area Code 314
FTS 279-4217

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
U.S. Court House and Custom House
St. Louis, Missouri 63101

September 5, 1980

TO: All Counsel of Record
Dr. Robert Wentz
Dr. Gary Orfield
Mr. Edward T. Foote

RE: Liddell et al., v.
Board of Education Of The City
of St. Louis, et al
USDC ED MO No. 72-100-C (C)

Gentlemen:

For the purpose of clarifying paragraphs 12(b), (c) and (d), it is requested that all counsel meet on Friday, September 12, 1980, at the office of Paul Rava, at 1:00 p.m., and with the Court in Chambers at 3:00 p.m., in order that we may have a mutual understanding about how we should proceed.

It is the Court's view that we should make every effort to have voluntary cooperation with all of the districts in St. Louis County before they are made parties and before we proceed on a involuntary plan.

Secondly, I see no reason why this Court should be burdened with reports from the United States and School Board indicating who may or may not be violating the

law and making them possible defendants. I have no objection to the Government, the State, or the School Board proceeding with their investigations but I do not think it is a matter to be reported to the Court until such time that the school districts may be joined and each district has an opportunity to defend themselves. Neither do I think we should take in any district involuntarily without them being made parties and without a full opportunity for a hearing and appeal.

Some thought should also be given to how we can eliminate a district from a involuntary plan in the event it cooperates in an adequate manner. What legal steps should be required to assure that district will not be brought into later litigation.

In addition to the discussion we have had concerning paragraph 12(b), (c), and (d) of the May 21st order, it strikes me as unreasonable that the State of Missouri by regulation has reduced the 80% transportation of children, as set out in the Statute, to less than 25% by regulation. I would like some further thought and discussion about that matter.

I am looking forward to seeing all of you on Friday, September 12, 1980.

Sincerely,

/s/ James H. Meredith
JAMES H. MEREDITH

JHM:js

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief in Opposition of Respondents Board of Education of the City of St. Louis, *et al.*, were mailed, postage prepaid, this 17th day of August, 1981 to:

Larry R. Marshall, Esq.
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65102

Attorney for Petitioners;

Charles H. Staples, Esq.
Freeman, Whitfield, Montgomery and Walton
Suite 647, 818 Olive Street
St. Louis, Missouri 63101

Richard B. Fields, Esq.
Ratner and Sugarmon
525 Commerce Title Building
Memphis, Tennessee 38103

Thomas I. Atkins, Esq.
General Counsel, NAACP
1790 Broadway
New York, New York 10019

Attorneys for Respondents Caldwell, *et al.*;

Anthony J. Sestric, Esq.
1015 Locust Street, Suite 601
St. Louis, Missouri 63101

Attorney for Respondents Adams, *et al.*;

Joseph S. McDuffie, Esq.
408 Olive Street
St. Louis, Missouri 63101

Attorney for Respondents Liddell, *et al.*;

Robert H. Dierker, Jr., Esq.
Assistant City Counselor
314 City Hall
12th and Market Streets
St. Louis, Missouri 63101

Attorney for Respondent City of St. Louis;

Craig Crenshaw, Jr., Esq.
Civil Rights Division
Appellate Section
U.S. Department of Justice
Washington, D.C. 20530

Attorney for Respondent
United States of America;

Ramon J. Morganstern
Morganstern, Sorghan, McKitrick and Garvin
773 Forsyth Blvd.
Clayton, Missouri 63105

Attorneys for Respondent
Special School District;

George J. Bude, Esq.
130 South Bemiston
Suite 405
Clayton, Missouri 63101

Attorney for "Amici Curiae"
and

Donald J. Stohr
Thompson & Mitchell
One Mercantile Center
Suite 3400
St. Louis, Missouri 63101

Attorneys for Amicus Curiae
Parkway School District

ALLEN R. SNYDER